

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
Pruet Production Company )  
Womack Hill Gas Plant )  
Gilbertown, Choctaw County, Alabama )  
 )  
Air Facility ID No. 101-0002 )

CONSENT ORDER NO. 09-XXX-CAP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Pruet Production Company (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates a natural gas processing plant (Air Facility ID No. 101-0002) in Gilbertown, Choctaw County, Alabama (hereinafter, “the Facility”).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee currently operates the Facility under the authority of Major Source Operating Permit Number 101-0002 (hereinafter, “the Permit”).

5. ADEM Admin Code r. 335-3-14-.01 (1)(a) and (b) state:

- (a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.
- (b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department

6. On July 15, 2009, the Department conducted an inspection of the Facility and was informed by the Permittee that the rental company had replaced the leased 275 HP Caterpillar 379A four stroke, lean burn, spark ignition refrigeration compressor engine with a Waukesha engine. No further details on the Waukesha engine were provided to the Department by the Permittee at the time of the inspection.

7. On July 29, 2009, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for failure to submit a permit application for the Waukesha engine prior to commencing construction and operation of the unit.

8. The Permittee responded to the NOV via letter, dated August 26, 2009. The response explained that the 275 HP refrigeration compressor engine was replaced with the

Waukesha engine in March 2007 and submitted a permit application for a 190 HP Waukesha four stroke, rich burn, spark ignition refrigeration compressor engine.

9. Proviso 3 of the emissions monitoring section of the Natural Gas Extraction Unit Flare subpart of the Permit requires that, except during times when the production facility is not manned by operation personnel or when a process stream is not being sent to the flare, the Permittee shall conduct a daily visible emission observation of the flare.

10. The NOV also included a violation for failure to perform daily visible emission observations on the flare.

11. The Permittee's NOV response letter further explained that the flare and the thermal oxidizer are within the same line of sight, allowing it to perform daily visible emissions observations on both units simultaneously. However, the Department noted that the Permittee only maintained records of daily visible emission observations performed on the thermal oxidizer, with no records being maintained for the flare.

12. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

13. The Department has agreed to the terms of this Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

14. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or

safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A.     SERIOUSNESS OF THE VIOLATIONS:     The Department considers the following violations by the Permittee to be serious:

(1) Failure to submit a permit application for the 190 HP Waukesha refrigeration compressor engine prior to it being installed and operated.

(2) Failure to maintain records of the daily visible emission observations conducted on the flare.

However, the Department is not aware of irreparable harm to the environment due to these violations.

B.     THE STANDARD OF CARE: The Permittee did not exhibit a sufficient level of care by failing to submit an application for the engine replacement prior to commencing its construction and operation and by failing to maintain a record of the daily visible emission observations conducted on the flare.

C.     ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: As a result of not incurring the costs associated with permit application fees, the Permittee may have derived some economic benefit from this violation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee subsequently took corrective actions by submitting an application to the Department for the replacement engine, by implementing new policies for modifying Facility equipment, and by maintaining a record of daily visible emission observations conducted on the flare.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of previous violations with the Department at this Facility.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$10,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the

effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing each and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the

Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or

enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.



Executed in duplicate, with each part being an original.

PRUET PRODUCTION COMPANY

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Onis "Trey" Glenn, III  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_